

Internal Revenue Service

Department of the Treasury

District
Director

1100 Commerce St., Dallas, Texas 75242

Date: **DEC 21 1995**

Employer ID Number:

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code.

The information submitted indicates that you were incorporated on [REDACTED] under the [REDACTED] Non-Profit Corporation Act. According to Article IV of your Articles, you are "organized and operated exclusively for civic purposes, recreation, to serve the betterment of the community" and other nonprofit purposes.

Your 1024 Application for Recognition of Exemption states that your principal purpose is the collection, expenditure and management of the maintenance charge funds, enforcement of the Declaration, providing for the maintenance, preservation and architectural control within your subdivision. Your source of income is the annual maintenance dues from homeowners within your subdivision.

The developer of your subdivision is presently managing you. Since there are [REDACTED] homeowners and [REDACTED] lots to be built on, the board and officers have not been elected.

The qualifications for membership in your Association is the ownership of a residence in [REDACTED].

Your only expense in [REDACTED] is for the grounds and yard maintenance of [REDACTED] homeowners, and totaled \$[REDACTED]. In [REDACTED], you have had two types of expenses through [REDACTED]:

- Grounds and yard maintenance for [REDACTED] homeowners - \$[REDACTED]
- Bank charges - \$[REDACTED]

[REDACTED]

The Subdivision Restrictive Covenants, which are dated [REDACTED], and were established by [REDACTED] (Declarant), states the following:

- Section II.A.(1) states that all of the lots shall be used for residential purposes only and no part of any lot shall be used for any type of business or profession;
- Section II.B.(1) states that no building shall be erected, altered, placed or permitted to remain on any lot other than one single family detached dwelling or house;
- Section III.C. states that the Architectural Control Committee shall consist of [REDACTED];
- Section VIII.C. states that every owner of a lot shall be a member of the Association;
- Section VIII.D. state that you shall have two classes of voting members:
 - (1) Class A members shall be all owners with the exception of the Declarant and shall be entitled to one vote for each lot owned;
 - (2) Class B members shall be the developers and shall be entitled to three votes for each lot owned;
- Section IX.F. states that the rate of assessment applicable to the lots owned by the declarant or a builder, and are not occupied as residences shall be equal to one-half of the full assessment as set by your Board of Directors.

Your correspondence dated [REDACTED] [REDACTED], and signed by the developer, [REDACTED] [REDACTED] states the following:

- There are [REDACTED] lots in the subdivision. The homes that have been built are garden type homes;
- There are no businesses, churches, schools or post offices within your boundaries;
- The annual membership dues is \$[REDACTED] per year;
- There are [REDACTED] unoccupied lots remaining in the subdivision;
- You have not chosen a board of directors or officers. The developer, [REDACTED] [REDACTED] manages your association;
- The grounds and yard maintenance are your only activities;
- You are a small community of mainly retired citizens who purchased homes in the subdivision because the maintenance of the grounds was included and some of the people were unable to maintain their own yards. This will be

your only activity. Your dues are governed by the cost of the grounds maintenance.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."

Section 1.501(c)(4)-1 of the regulations provides, in part, as follows:

"(a)(1) In general. A civic league or organization may be exempt as an organization described in section 501(c)(4) if -

(i) It is not organized or operated for profit; and

(ii) It is operated exclusively for the promotion of social welfare."

"(a)(2)(i) An organization is operated exclusively for the promotion of social welfare when it is primarily engaged in promoting, in some way, the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements *** The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit.***"

Revenue Ruling 69-280, 1969-1 C.B. 152, describes a nonprofit organization formed to provide maintenance of the exterior walls and roofs of homes of members who own houses in a development. The services include the painting of exterior walls and the repair of roofs. If a person purchases a unit in the housing development, he is required to become a member of the organization. The organization is not exempt as a social welfare organization under IRC 501(c)(4).

In the Revenue Ruling 72-102, 1972-1 C.B. 149, a membership organization formed by a developer to administer and enforce covenants for preserving the architecture and appearance of a housing development and to own and maintain common green areas, streets and sidewalks for the use of all development residents was held exempt under IRC 501(c)(4).

The Revenue Ruling 74-99, 1974-1 C.B. 131, modified and clarified Revenue Ruling 72-102. It provides that in order to qualify for exemption under IRC 501(c)(4),

[REDACTED]

a homeowners' association: must serve a "community" which bears a reasonable recognizable relation to an area ordinarily identified as governmental; it must not conduct activities directed to the exterior maintenance of private residences; and the common areas of facilities it owns and maintains must be for the use and enjoyment of the general public.

According to the Revenue Ruling 80-63, 1980-1 C.B. 116, no hard and fast rule can be applied as to what constitutes a "community," but that each case must be examined to determine whether the activities of the organization have sufficient community benefit to serve a social welfare purpose under IRC 501(c)(4). Although the area represented by an association may not be a community, if the association's activities benefit a community, it may still qualify for exemption. This revenue ruling also establishes that the owning and maintaining of parking facilities for the use of its members is for the private benefit of its members, and not for the promotion of social welfare within the meaning of section 501(c)(4) of the Code.

The yard maintenance which you provide your member is the exterior maintenance of private residences. You are performing services for your members that they would otherwise have to provide for themselves. Therefore, you are similar to the organization described in the Revenue Ruling 69-280.

Because you provide yard maintenance for your members, you do not meet a requirement of the Revenue Ruling 74-99: that you must not conduct activities directed to the exterior maintenance of private residences.

You operate for the economic benefit of the developer, Mason R. Bass, who controls you. You are a vehicle for this developer to advance his sale of homes within your subdivision.

You operate for the convenience of your members. You furnish private benefits to your members, rather than public benefits to the community.

Since you are providing a service for a fee, you are not a homeowners' association, and do not qualify for treatment under IRC 528. Therefore, you should not file Form 1120-H.

Accordingly, it is held that you are not entitled to exemption from Federal income tax as an organization described in IRC 501(c)(4), and you are required to file Federal income tax returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

[REDACTED]

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

District Director

Enclosures:
Publication 892
Form 6018